



November 8, 2001

Mr. David A. Anderson  
General Counsel  
Texas Educational Association  
1701 North Congress Avenue  
Austin, Texas 78701-1494

OR2001-5162

Dear Mr. Anderson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 154016.

The Texas Education Agency ("TEA") received a request for copies of proposals submitted by PricewaterhouseCoopers, L.L.P. ("PWC") pertaining to a specified Request for Proposal. You claim that the requested information may be excepted from disclosure pursuant to sections 552.101 and 552.110 of the Government Code. You state, and provide documentation showing, that you notified PWC of the request for information. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances). We have considered the exceptions claimed and have reviewed all submitted information.

PWC responded to TEA's section 552.305 notice by arguing that portions of its proposals are excepted from disclosure pursuant to section 552.110 of the Government Code.<sup>1</sup> Section 552.110(b) excepts from disclosure "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial

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<sup>1</sup> PWC claims in its section 552.305 brief that portions of its proposals are excepted from disclosure pursuant to section 552.111 of the Government Code. We assume for purposes of this letter ruling that PWC intended to claim that portions of its proposals are excepted from disclosure pursuant to section 552.110 of the Government Code. We also note that we did not receive any explanation from PWC as to why portions of the submitted information may be excepted from disclosure pursuant to section 552.101 of the Government Code. Accordingly, we do not address this exception with regard to any of the submitted information.

competitive harm to the person from whom the information was obtained.” An entity will not meet its burden under section 552.110(b) by a mere conclusory assertion of a possibility of commercial harm. *Cf. National Parks & Conservation Ass’n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974). The governmental body or interested third party raising section 552.110(b) must provide a specific factual or evidentiary showing that substantial competitive injury would likely result from disclosure of the requested information. *See* Open Records Decision No. 639 at 4 (1996) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure).

PWC argues that its proposals contain the following five categories of information that are protected from disclosure under section 552.110: proposal strategy; technical approach, methodologies, and tools; staffing approach and key personnel; prior client engagements and experience; and pricing strategy. PWC argues that the release of these portions of its proposals would cause substantial harm to PWC’s position in the government and commercial markets for information technology and financial consulting services, by allowing PWC’s competitors to unfairly anticipate and copy those aspects of PWC’s strategy which PWC uses to distinguish itself from its competitors. PWC also argues that the release of this information would allow competitors to anticipate and copy PWC’s staffing approach on complex engagements which could, thus, impact PWC’s ability to win contracts in the competitive consulting industry. PWC also argues that the release of this information would provide competitors with a virtual roadmap to PWC’s strategy in pricing jobs in the highly competitive market for information technology and financial consulting services and would allow competitors to anticipate and underbid PWC’s pricing on similar procurements. Based on PWC’s arguments and our review of the relevant information in PWC’s proposals, we conclude that TEA must withhold from disclosure the information from PWC’s proposals that we have marked pursuant to section 552.110(b) of the Government Code. The remaining submitted information must be released to the requestor. *See* Open Records Decision Nos. 319 (1982) (finding information relating to organization, personnel, market studies, professional references, qualifications, and experience not excepted under section 552.110).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

*Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

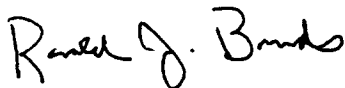
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/seg

Ref: ID# 154016

Enc. Marked documents

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